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92-222

RE: CC Docket No. 91-141 - In the Matter of Expanded
Interconnection with Local Telephone Company Facilities

APR 15 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Expanded Interconnection with
Local Telephone Company Facilities

Amendment of the Part 69 Allocation
of General Support Facility Costs

)
) CC Docket No. 91-141
) Phase I
)

) CC Docket No. 92-222
)

SUPPLEMENTAL FILING IN SUPPORT OF THE REQUEST OF THE MISSOURI
PUBLIC SERVICE COMMISSION FOR A DECLARATORY RULING ON THE
SUFFICIENCY OF ITS STATE ACTION

telecommunications company provided collocation, then the company had the power to choose whether to provide physical or virtual collocation and required that it be provided in a non-discriminatory manner. As might be expected, the local exchange telecommunications companies supported the rule as written; all other parties either opposed the rule or proposed significant changes. The Staff comments proposed an almost completely different rule, in place of the originally proposed rule. The Staff proposal would make expanded interconnection mandatory, would preserve but limit local exchange telecommunications company choice as to the kind of interconnection to provide, would extend to "non-tier one LECs", and would incorporate a number of safeguards for both the companies and the interconnectors. The Staff comments are appended hereto as "Attachment 1" and are hereby incorporated as if fully set forth herein.

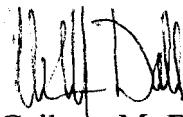
2. On March 1, 1993, the parties filed reply comments. Certain parties supported the Staff proposal and certain parties opposed it. All commenters, regardless of their substantive position on the Staff's proposal, complained of the inadequacy of the time within which they were to review, evaluate and comment on the Staff proposal, and raised significant Due Process concerns.

3. The MoPSC steadfastly maintains that adoption of the rule through notice and comment only, without a hearing and within the comment times set out in Chapter 536 RSMo 1986, completely adheres to Missouri law and to constitutional requirements of Due Process. However, the MoPSC believes the Staff proposal, with certain amendments, should be published in order to allow for a full review and comment cycle. On April 9, 1993, the MoPSC withdrew its emergency rule and the proposed rule and published the Staff proposal.

Copies of the Orders and Notice of Rulemaking are appended hereto as "Attachments 2, 3 and 4," respectively, and are hereby incorporated as if fully set forth herein.

The MoPSC was fully cognizant when it withdrew the proposed and emergency rules that such action would place it well out of time to comply strictly with the FCC's requirements for state action in this docket. However, the MoPSC believes it is necessary to provide a thorough, well balanced approach to expanded interconnection in Missouri. The MoPSC believes that the present proposal accomplishes this and requests that the FCC support Missouri's efforts to respond to the need for responsible introduction of competition in the provision of special access and private line service. The MoPSC requests that the FCC either conditionally approve the sufficiency of its state action based on the present proposal, or allow sufficient time to finalize the adoption of the proposal before it rules on the sufficiency thereof.

Respectfully submitted,



Colleen M. Dale
Senior Counsel

Attorney for the
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314-751-7431

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of)
)
Proposed Amendment to) Case No. TX-93-215
MO 4 CSR 240-32.090, Connection of)
Equipment to the Telephone Network)

COMMENTS OF THE STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION

Introduction

The Staff is proposing, through these comments, that the proposed amendment to 4 CSR 240-32.090 be significantly altered. The Staff's proposal requires local exchange telecommunications companies that provide basic local telecommunications service (LECs) to establish points of interconnection with LEC facilities within central office facilities (COs) and allows interconnectors to collocate their cables and other equipment inside LEC conduit and COs. The purpose of this proposal is twofold: (1) to fashion a rule that fairly balances the interests of LECS and those of interconnectors, which will be necessary in order to persuade the Federal Communications Commission (FCC) to defer to this state's collocation policy, and (2) to realistically and reasonably accommodate competition in the arena of exchange access without imposing undue burdens on monopoly ratepayers or LECs.

FILED
FEB 19 1993
MISSOURI
PUBLIC SERVICE COMMISSION

The Staff's Proposal

Purpose: The purpose of this amendment is to set the terms and conditions under which local exchange telecommunications companies allow interconnection with their facilities.

(2) The following sections shall govern the manner in which a telecommunications company providing basic local telecommunications service provides interconnection with its facilities for the purpose of an interconnector's provision of, or access to, special access and private line services.

(a) Upon the request of an interconnector, a company shall provide interconnection to the company facilities. For each type of interconnection, a company shall provide entrance to its facilities at the underground enclosure nearest the central office, or at a location mutually agreeable to the company and the interconnector. The company shall pull the length of cable supplied by the interconnector through the cable vault and into the facility for connection to either the interconnector's or the company's equipment. The company shall not permit the interconnector to have access to the cable vault and the company shall maintain the entire portion of the interconnector's line to which the interconnector does not have access. Interconnection shall be provided in one of the following ways:

1. Physical collocation, in which the interconnector's equipment is located within the company's central office. The company shall provide the interconnector an avenue of ingress

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(c) An agreement to interconnect and an interconnection are not transferable to other potential interconnectors, except for bona fide successors in interest to the interconnector's business, unless a transfer is mutually agreeable to the parties.

(d) A company shall not be required to expend any resources for planning or construction of facilities to accommodate interconnection without a then-pending request for interconnection at a given site.

(e) Each company shall fully recover from the interconnector all costs reasonably incurred for the purposes of interconnection.

(f) Within ten days of the effective date of this rule, each company with 100,000 or more access lines shall file a proposed tariff for the provision of interconnection that sets forth the terms and conditions for each kind of interconnection and sets forth the manner in which rates and charges will be calculated. The tariff will limit duration of the contract for interconnection to no more than five years, and will provide for reasonable notice to be given if the contract is not to be renewed. The tariff may require that an interconnector agree, as a condition precedent to interconnection, to permit that company to interconnect with it, in compliance with the provisions of this rule, as if the interconnector were a telecommunications company providing basic local telecommunications service. Each company with fewer than 100,000 access lines shall file such a proposed tariff within 30 days of the first bona fide request for interconnection. The tariff shall provide that the rates and charges for interconnection shall be determined on a

customer-specific basis.

(g) Each company shall require an interconnector to pay a deposit at the time it requests interconnection, in accordance with the provisions of the company's tariff. If the company does not have an approved interconnection tariff at the time interconnection is requested, then no deposit will be required until the tariff is approved. A company's tariff shall require a minimum non-refundable deposit of \$5,000, which shall be made with any request for interconnection or

terms of paragraphs (c) through (h) of this section.

Federal Requirements

On October 19, 1992, the FCC released its Special Access Expanded Interconnection Order.¹ This order requires Tier I LECs to furnish expanded interconnection for special access through physical collocation in all of their COs. Special access involves connections that are dedicated to the exclusive use of particular subscribers from their premises to interexchange carriers' (IXCs') points of presence. Physical collocation, in accordance with the FCC's rules, permits interconnectors to locate their transmission equipment inside LEC COs and have physical access to those COs in order to install, maintain and repair that equipment.

The FCC's order makes such expanded interconnection available to the public generally.

Under virtual collocation as conceived by the FCC, the interconnection point would delimit ownership of the transmission media between the LEC and the interconnector. Under the FCC's version of physical collocation, the interconnection point would mark where the interconnector would begin to pay the LEC for use of its conduit space.

Finally, the FCC's order restricts the kinds of equipment interconnectors may place inside LEC COs. Interconnectors are allowed to collocate equipment required to terminate basic transmission facilities, such as optical terminating equipment and multiplexers. LECs are not required to allow collocation of other types of terminal equipment, such as enhanced services equipment or customer premises equipment.

Physical collocation is mandatory under the FCC's policy, with certain limitations. First, sufficient CO space must be available. Second, LECs and interconnectors remain free to negotiate virtual collocation arrangements comparable in quality to physical collocation. Third, the FCC will defer to a state policy preferring virtual collocation or permitting LECs to choose between virtual and physical collocation. It is the third exception at which the Staff has aimed its proposal.

Discussion

The Staff's proposal differs in several important respects from the proposed rule. These differences are intended to strike a better balance between the conflicting interests of the LECs and their competitors and the public interest in accommodating competition in exchange access. The key differences are that under the Staff's proposal, interconnectors would be given specific

options and LECs would be afforded specific protection from the risk of loss associated with making investments specific to interconnection arrangements. This protection should not only alleviate concerns about an unlawful taking of property but should also give interconnectors a stronger incentive to select the option that minimizes both their own costs and the costs incurred by LECs.

The Staff's proposal specifies, in section (2)(a), three forms of interconnection, which are termed physical collocation, virtual collocation and remote interconnection. All three would designate a location, or permit the parties to designate a different location, where the LEC would permit entrance to its facilities.

The Staff's proposal, in section (2)(h), would require LECs to offer physical and virtual collocation, where provided, without undue discrimination on a first-come, first-served basis.

Remote interconnection would provide the same variety of services and the same level of quality as physical or virtual collocation (see section (2)(a)3.). The Staff's proposal would permit Missouri's LECs to refuse to provide physical collocation. LECs could also choose to provide physical collocation rather than virtual collocation. Remote interconnection would be provided only upon an interconnector's request or if the absence of central office space precludes virtual or physical collocation (see section (2)(b)).

The Staff's proposal specifically protects LECs against the potential losses attendant upon requiring them to make investments specific to particular interconnection arrangements. To the extent that such investments involve assets that cannot be redeployed, the bulk of the associated costs are sunk and cannot be recovered, except potentially from other ratepayers, if interconnectors for some reason fail to pay. Thus, the Staff proposal contains certain safeguards

in sections (2)(d) and (e). The proposal makes it clear that both the non-recurring and recurring costs of providing interconnection shall be fully recovered from interconnectors. Consistent with this provision are the provisions, in section (2)(f) and (g), that the rates and charges for interconnection must be determined on a customer specific basis and that the LECs be allowed to collect a non-refundable deposit of at least \$5,000 for each request for interconnection.

The proposal makes it clear that the agreement to interconnect, although certainly subject to the filed tariffs, is a contract between the parties (see section (2)(i)) pertinent only to those parties to the contract (see section (2)(c)).

WHEREFORE, the Staff respectfully requests that the Commission adopt the Staff proposal in lieu of the proposed rule.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda K. Aldner for", written over the printed name "Colleen M. Dale".

Colleen M. Dale
Senior Counsel

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102
314-751-7431

Title 4 - DEPARTMENT OF
ECONOMIC DEVELOPMENT

Division 240 - Public Service Commission

Chapter 32 - Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 536.021 (5), RSMo (Cum. Supp. 1992), the Commission withdraws the following Proposed Amendment:

4 CSR 240-32.090 Connection of Equipment to the Telephone
Network is
withdrawn.

A Notice of Proposed Rulemaking containing the text of the Proposed Amendment was published in the Missouri Register on January 19, 1993 (18 MoReg 145, 146). A future proposal is planned to address this issue.

1/19/93
A. Smith

APR 19 1993

Title 4 - DEPARTMENT OF
ECONOMIC DEVELOPMENT

Division 240 - Public Service Commission

Chapter 32 - Telecommunications Service

PROPOSED AMENDMENT

4 CSR 240-32.090 Connection of Equipment to the Telephone Network

PURPOSE: This amendment requires local exchange telecommunications companies to provide interconnection with their central office facilities in certain circumstances and sets forth guidelines for such provision.

(2) The following shall govern the manner in which a telecommunications company - providing basic local telecommunications service provides interconnection with its facilities for the purpose of an interconnector's provision of, or access to, special access and private line services.

(a) Upon the request of an interconnector, a company shall provide interconnection to the company facilities. For each type of interconnection, a company shall provide entrance to its facilities at the underground enclosure nearest the central office, or at a location mutually agreeable to the company and the interconnector. The company shall pull the length of cable supplied by the interconnector through the cable vault and into the facility for connection to either the interconnector's or the company's equipment. The company shall not permit the interconnector to have access to the cable vault and the company shall maintain the entire portion of the interconnector's line to which the interconnector does not have access. Interconnection shall be provided in one of the following ways:

1. Physical collocation, which the interconnector's equipment is located within the company's central office. The company shall provide the interconnector an avenue of ingress to and egress from that equipment and the company shall segregate its own equipment in an area to which only company personnel have access;

2. Virtual collocation, in which the company purchases the equipment specified by the interconnector, locates the equipment within the central office and dedicates it to the use of the interconnector. The equipment shall be owned and maintained by the company. The company shall not permit the interconnector access to the central office, but shall allow the interconnector to monitor and control remotely the equipment dedicated to it; or

3. Remote interconnection, in which the interconnector's line(s) shall be connected directly to company facilities, without permitting the interconnector to specify equipment or requiring the company to dedicate equipment to the interconnector's use. Remote interconnection shall provide the same variety of services and the same level of quality as physical or virtual collocation.

(b) If an interconnector requests physical or virtual collocation, a company shall provide either physical or virtual collocation. If the absence of central office space precludes collocation, a company shall offer remote interconnection. If an interconnector requests remote interconnection, a company shall provide it.

(c) An agreement to interconnect and an interconnection are not transferable to other potential interconnectors, except for bona fide successors in interest to the interconnector's business, unless a transfer is mutually agreeable to the parties.

(d) A company shall not be required to expend any resources for planning or construction of facilities to accommodate interconnection without a then-pending request for interconnection at a given site.

(e) If a company requires a type of interconnection that will be more expensive than the type requested by the interconnector, then the company may not recover more costs than would be incurred in the less expensive alternative.

(f) Within ten (10) days of the effective date of this rule, each company with 100,000 or more access lines shall file a proposed tariff for the provision of interconnection that sets forth the terms and conditions for each kind of interconnection and sets forth the manner in which rates and charges will be calculated. The tariff shall provide for a contract term of five years unless the parties agree otherwise, and will provide for reasonable notice to be given if the contract is not to be renewed. The tariff may require that an interconnector agree, as a condition precedent to interconnection, to permit that company to interconnect with it, in compliance with the provisions of this rule, as if the interconnector were a telecommunications company providing basic local telecommunications service. Each company with fewer than 100,000 access lines shall file such a proposed tariff within ninety (90) days of the first bona fide request for interconnection. The tariff shall provide that the rates and charges for interconnection shall be determined on a customer-specific basis.

(g) Each company shall require an interconnector to pay a deposit at the time it requests interconnection, in accordance with the provisions of the company's tariff. If the company does not have an approved interconnection tariff at the time interconnection is requested, then no deposit

will be required until the tariff is approved. A company's tariff shall require a minimum non-refundable deposit of \$5,000, which shall be made with any request for interconnection or upon approval of the tariff, whichever is later. Such deposit, and any additional deposit provided under the tariff and used to cover the costs incurred in gathering the information necessary to propose specific interconnection at specific rates to the interconnector and, if applicable, provide such interconnection. Such costs may include, but are not limited to, the costs incurred in providing a price quotation, design, engineering, construction and remodeling costs and costs incurred for training maintenance personnel. Consistent with its tariff, the company may require the interconnector to deposit additional amounts, as needed, to pay for non-recurring costs incurred on behalf of the interconnector. Any portion of the deposit not used for non-recurring costs shall be applied to recurring charges.

(h) Where provided, physical and virtual collocation and remote interconnection must be provided on a non-discriminatory, first-come, first-served basis.

(i) The company and the interconnector shall remain free to negotiate interconnection agreements other than those specified herein, provided such arrangements are consistent with the terms of paragraphs (c) through (h) of this section.

Auth: Sections 386.040 RSMo (1986), 386.250 (6), (12), RSMo Supp. (1992), 386.310 RSMo (1986) and 392.200 RSMo Supp. (1992). Original rule filed July 13, 1978, effective Jan. 13, 1979. Amended: Filed April 9, 1993.

STATE AGENCY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than five hundred dollars in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than five hundred dollars in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to these rulemakings with the Missouri Public Service Commission, Brent Stewart, Executive Secretary, P.O. Box 360, Jefferson City, MO 65102, (314)751-3234. To be considered, initial comments must be received on or before May 24, 1993. and reply comments must be received on or before